

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

FAO No. 394 of 2000

Judgment reserved on: 23.11.2006.

Date of Decision: December 28, 2006

Subestain Alias Guddu

...Appellant.

Versus.

Municipal Corporation, Shimla

.. Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): Mr. R.K.Bawa, Sr.Advocate with Mr. Rajpal Thakur, Advocate.

For the Respondent(s): Mr. K.L.Bali, Advocate.

Deepak Gupta, J.

This appeal is directed against the order of the District Judge, Shimla whereby he has allowed the appeal filed by the Municipal Corporation and set aside the judgment and decree passed by the trial Court by holding that the civil court had no jurisdiction to entertain the suit in view of the bar created by Section 268(4) of the Municipal Corporation Act.

The brief facts of the case are that the appellant filed a suit against the respondent Municipal Corporation for issuance of permanent prohibitory injunction restraining the Municipal Corporation from demolishing the church or quarters attached to it situate in khasra numbers 151 and 151/1 Station Ward, Chhota Shimla. According to the appellant, he was allowed to live in the quarter existing in the cemetery. In May 1991, he received two notices from the Commissioner, Municipal Corporation calling upon him to show cause why the alleged unauthorized construction raised by him be not demolished. He replied to the notices and stated that he had only repaired the old structure and had not raised any new structure. As per the appellant, nothing further was done by the Corporation.

This suit was contested by the Corporation and one of the grounds raised was that the suit was barred under Section 268(4) of the H.P. Municipal Corporation Act, 1979 which reads as under:

“(4) Save as provided in this section no court shall entertain any suit, application or other

proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section. “

This section corresponds to Section 253(4) of the Municipal Corporation Act, 1994.

A bare reading of this section shows that no civil court has the right or power to entertain any suit in connection with order of demolition passed by the Commissioner. In the evidence led before the courts below, it is established that the matter did not end with issuance of the notices in May, 1991 as alleged by the appellant/plaintiff but culminated in the passing of the order of demolition on 27.9.1991 which is admitted by the appellant and which fact has been stated by DW1 on oath. Thus the civil court had no jurisdiction to entertain the suit.

Therefore, I do not find any reason to interfere in the order of the learned lower appellate court. The appeal is accordingly dismissed. It is, however, ordered that keeping in view the fact that the present proceedings were pending in the civil court, the appellant may

challenge the order of demolition before the appropriate forum. He may also seek such other remedy as is available to him.

December 28, 2006
S.

(Deepak Gupta), J.